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Investing into Ukraine through a Cyprus Alternative Investment Fund



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During the last 6 months, Cyprus has taken one of the top places among foreign direct investors into the Ukrainian economy. Thus, as of the 1st April 2016, the amount of Cyprus investments into the share capital of Ukrainian entities exceeds 25% of all foreign investments. Various factors are considered to have enhanced the increase of investments in Ukraine, including the recent legislative changes in Ukraine aimed at the improvement of protection of investors' rights, the cancellation of foreign investments' registration, and the recent announcement by the Ukrainian Government regarding the launch of an investment support office. In regards to Cyprus, its high level of commercial infrastructure, political stability, favorable legislation and tax regime, as well as other factors, make it an attractive jurisdiction to be used for investment into Ukraine.

One of the approaches to investments into Ukraine from Cyprus, which became recently available, is the investment via Cyprus Alternative Investment Funds ("AIF"s). AIFs permit the profit generation and increase by various ways, with the use of a wide range of financial instruments and investment strategies aimed at the achievement of profitability and mitigation of the risk of losses. They are governed by more flexible regulations as compared to other organizational forms of entities and use a wider range of strategies as compared to traditional funds, making them an attractive investment instrument. AIFs are known and used all over the world and permit the private units' placement among participants, with the consideration of securities' legislation of respective jurisdictions.

In regards to Cyprus AIFs, worth mentioning is the respective legislative framework governing them. AIFs were formally introduced in Cyprus by the Alternative Investment Funds Law ("AIF Law") approved in 2014 by the Cyprus House of Representatives which, in particular, brings the Cyprus AIF's legal framework in line with relevant AIF – related legislation of EU. Cyprus AIFs are domestic funds recognized abroad, whose units of participation can be disposed of by means of private placement to investors and used for investing into other countries, including Ukraine, subject to the compliance with securities' legislation of respective jurisdictions. Investment can be performed in the form of equity investments, non-listed securities, shares in the charter capital, etc.

The AIF Law envisages the creation of funds:

- without the limitation of amount of investors, which can be created in the form of a company, common fund and LLP; and
- With the limited number of investors up to 75 persons, which can be created in the form of a company and LLP.

AIFs are regulated and licensed by the Cyprus Securities and Exchange Commission ("CYSEC"). AIFs can be set up as umbrella funds, operating with various investment types, policies, etc, and with the creation of independent sub-funds. In order to create a sub-fund, the approval and acquiring of respective license by CYSEC is required. The licensing procedure takes up to 3 (three) months, however there is a possibility to undergo a fast-track procedure. Further, a participation of investors in sub-fund takes place, with the minimum amount of investment per investor at EUR 125,000 or equivalent value of assets as contribution in kind. The most common operation method is of sub-fund investing into securities and/or SPVs, while SPV further invests into other objects of investment such as trading companies, real estate, etc. The investor of a sub-fund is considered to create goodwill from the rise of the net asset value of the sub-fund.

AIFs have a number of advantages. In particular, the absence of restrictions as to the type of investments in which AIF may invest (subject to the investment policy being approved by CYEC) as well as no investment diversification requirements, simple application procedure, a portfolio manager of AIF who may reside either in Cyprus or abroad provides for a simplified licensing procedure and flexible investment strategies. As already mentioned above, AIFs with no limitation as to the amount of investors can be listed either in Cyprus or at any other EU stock exchange. It may utilize benefits under the Cyprus double tax treaties and may obtain a tax residency certificate, while withholding tax on dividends and capital gain tax do not apply to profit generated through AIF. Tax legislation does not contain any special reservations as to AIFs, and, accordingly, it is being taxed under the same tax regime that Cyprus companies are.

According to AIF Law, there are no specific requirements for the unitholders and investors of AIF, other than the requirement of the unitholders and investors undergoing an extensive "know your customer" procedure and if the latter is a legal entity, then all relevant information and documents should be provided until a natural person - ultimate beneficial owner is identified, as well as sufficient information as to the origin of the assets.

Eurofast as a recognized leading professional services provider in Cyprus, with excellent reputation and significant experience in corporate and financial services market, would be happy to assist clients wishing to establish AIF for investing into Ukraine on all aspects relating to the establishment and maintenance of AIF, including the representation to CYSEC throughout the procedure for obtaining the license. We would be able to provide all necessary advice and assistance on all stages of AIF establishment in order to mitigate any risks and challenges which you may face with this regard.